

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Application of SAN DIEGO GAS & ELECTRIC COMPANY for Authority Pursuant to Public Utilities Code Section 851 to Sell Certain Property in Its Transmission Corridor in the City of San Juan Capistrano in the County of Orange to Whispering Hills, LLC, to Realign Transmission and Distribution Lines Overhead on a Temporary Basis and Underground on a Permanent Basis and to Enter into Easements with Whispering Hills, LLC. (U 902-E)

Application 04-07-049  
(Filed July 30, 2004)

**ADMINISTRATIVE LAW JUDGE'S RULING  
REQUESTING ADDITIONAL INFORMATION AND SERVICE**

**Summary**

San Diego Gas & Electric Company (SDG&E) has submitted an application requesting permission to sell property in a transmission corridor in the City of San Juan Capistrano (City). In addition to the application, SDG&E filed a motion asking for expedited authorization for grading of the property while the application is still pending. While the substance of the application appears to be relatively innocuous, the application itself is incomplete, the service of the application and the motion is inadequate, and the process SDG&E chose to use in submitting the application appears to be questionable. This ruling directs SDG&E to supplement the application and to more broadly serve the application and the motion. SDG&E should also be prepared in this proceeding to explain in more detail the process it used in preparing and submitting the application.

## **Background**

According to SDG&E's application, Whispering Hills, LLC (Developer) is building Whispering Hills Estates, which is a gated planned community of 155 single-family homes and a high school site, located in the City. SDG&E owns a transmission corridor and transmission lines in the area of the planned development. The overall plan is for SDG&E to temporarily relocate its transmission lines, the developer would then grade and prepare a street in the area of the current transmission lines, and the transmission lines would then be permanently relocated underground in the street. SDG&E requested Commission approval of the temporary and permanent relocation of the lines in Advice Letter 1566-E, filed February 17, 2004, and approved on April 1, 2004. In its present application, filed July 30, 2004, SDG&E now proposes to sell its transmission corridor in the areas of the development to Whispering Hills and to retain an easement for its facilities. Sale of utility property, such as the land at issue here, requires Commission approval under Public Utilities Code Section 851.

## **CEQA**

Commission approval of a project, such as a sale of property under Section 851, may trigger an environmental review process under the California Environmental Quality Act (CEQA). Here, however, CEQA review has already been performed by the City of (for the permanent relocation of the transmission lines) and the Capistrano Unified School District (School District) (for the temporary relocation of the transmission lines). SDG&E asserts that no further environmental review under CEQA is necessary, or in the alternative, that CEQA review is inapplicable. (Application, pp. 10-11.) While SDG&E is generally correct that the Commission need not redo the same analysis that has already

been performed by the City or the School District, we do need to determine whether the project is exempt from CEQA review by the Commission or whether the Commission must act as a responsible agency under CEQA. If SDG&E believes an exemption from CEQA is appropriate, SDG&E should identify that exemption with citations to the appropriate code sections and CEQA Guidelines.

### **Contents of the Application**

The application includes the Addendum to the City's Environmental Impact Report, prepared by the School District (Addendum), but does not include the City's Environmental Impact Report (EIR). SDG&E claims that the City's EIR has been superseded by subsequent EIRs, and accordingly was not included. (Application, p. 10, fn. 6.)

However, the City's EIR and the School District's Addendum examined different aspects of the project. The City's EIR apparently reviewed the environmental impacts of the *permanent* relocation of the transmission lines, while the School District's Addendum reviewed only the environmental impacts of the *temporary* relocation. Because the application addresses the permanent relocation of the transmission lines, we must consider the City's EIR, not just the School District's Addendum to that EIR. Accordingly, SDG&E needs to provide the Commission with the EIR prepared by the City of San Juan Capistrano.<sup>1</sup>

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<sup>1</sup> SDG&E's application refers to "subsequent EIRs," not just the School District's Addendum. If there are any additional EIRs (or other CEQA documents) prepared for this project that have not been identified, those EIRs should be identified and provided to the Commission.

In addition, part of page 9 of the Addendum (attached to the application at Tab 8) is missing from the copy provided to the Commission. SDG&E needs to provide a complete copy of page 9.

### **Motion**

In conjunction with its application, SDG&E also filed a Motion, requesting expedited authorization to allow the developer to grade the property in question, while the application for the sale of the property is still pending. SDG&E further requests expedited approval of the application itself. Rather than address SDG&E's Motion via an Administrative Law Judge Ruling, it would be more appropriate for the Commission to consider the request for grading as part of the application itself. Accordingly, the substance of the Motion is incorporated into the application, and will be addressed by the Commission in a decision.

### **Service**

According to the certificates of service attached to the Application and the Motion, both documents were only served on a single representative of the developer and three employees of Sempra and SDG&E. No service was made on the Commission's Office of Ratepayer Advocates, the City of San Juan Capistrano or anyone else. This is inadequate service. SDG&E shall serve its application,<sup>2</sup> motion, and a copy of this ruling on the same service list it used for Advice Letter 1566-E, plus the City and School District, and on any entities or individuals that submitted comments on the EIR prepared by the City or the

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<sup>2</sup> SDG&E need not include the attachments to the application, but must state in a cover letter that they will be provided promptly upon request.

A.04-07-049 PVA/sid

Addendum prepared by the School District. Recipients (and others) will have 30 days from this new date of service to protest the application.

### **Process and Request for Expedited Approval**

SDG&E states that it needs expedited approval of its application, and argues that there is "time-sensitivity" for grading the property, and describes the line relocation as "the critical path item" on the developer's schedule. (See, p. 4, and Tab 7, p. DAW-3.) Given these statements, the fact that SDG&E did not file the present application until July 30, 2004 is baffling, as from the application itself it appears that SDG&E had known for months, if not years, prior to that date that it would need to submit an application to the Commission under Section 851.

For example, the Addendum, which was completed in January of 2004 (and presumably started sometime in 2003) states that: "SDG&E must file an application pursuant to Section 851 of the CPUC Code for authorization to sell land affected by this project, and to take back an easement." (Tab 8, p. 38.)

SDG&E knew (at an absolute minimum) six months prior to its submission of its application that it needed Commission approval under Section 851. In fact, at the time that SDG&E submitted its Advice Letter 1566-E in February 2004, requesting relocation of the transmission lines, it already knew that it was going to submit an application under Section 851.

SDG&E's failure to disclose to the Commission in a timely manner its intent to submit an application under Section 851 is potentially troublesome, particularly in light of its request for expedited approval. SDG&E is put on notice that it should be prepared to address in detail its activities relating to this project, particularly the process and reasoning it used in preparing and submitting the present application and the related prior advice letter. Accordingly, SDG&E is ordered to maintain all documentary and other evidence (both existing and future, and including documents and evidence in electronic

form), relating to the application or its subject matter. SDG&E shall also identify all individuals that it is aware of (whether or not they are employed by SDG&E) who have knowledge of the application or its subject matter.

**IT IS RULED** that:

1. San Diego Gas & Electric Company (SDG&E) shall serve its application, motion, and this ruling on the additional parties identified and described above.
2. This service will start a new 30-day protest period.
3. SDG&E shall file a supplement to its application within 15 days of this ruling, and shall serve a notice of availability of the supplement on the same additional parties identified and described above.
4. In its supplement, SDG&E shall include the following information:
  - a. Citation(s) to appropriate code section(s) and CEQA Guideline(s) supporting any claim by SDG&E that its application is exempt from CEQA;
  - b. The EIR for the project prepared by the City of San Juan Capistrano;
  - c. Any other EIR or CEQA document on the project other than the previously-submitted Addendum;
  - d. A complete copy of page 9 of the Addendum (Tab 8 to the application);
  - e. Certificate of service reflecting the required additional service;
  - f. A list of all individuals (including name, employer, job title and relationship to the project) known to SDG&E or its employees or contractors who have knowledge of the application or the subject matter of the application.

5. Effective immediately and until further notice, SDG&E shall maintain all documentary and other evidence (both existing and future, and including documents and evidence in electronic form) relating to the application and/or its subject matter.

Dated October 14, 2004, at San Francisco, California.

/s/ PETER V. ALLEN

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Peter V. Allen  
Administrative Law Judge



**CERTIFICATE OF SERVICE**

I certify that I have by mail, and by electronic mail to the parties to which an electronic mail address has been provided, this day served a true copy of the original attached Administrative Law Judge's Ruling Requesting Additional Information and Service on all parties of record in this proceeding or their attorneys of record.

Dated October 14, 2004, at San Francisco, California.

/s/ FANNIE SID

Fannie Sid

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.